

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROL LARSON, as attorney in fact for
PATRICIA PEARCY,

Plaintiff,

v.

JACKSON NATIONAL LIFE INSURANCE
COMPANY,

Defendant.

No. 2:23-cv-00354-RSL

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 **2. “CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: medical, mental health and other Protected Health Information
4 (“PHI”) concerning Patricia Percy, claims handling guidelines or procedures of Continental
5 Casualty Company¹, claims investigation guidelines or procedures of Continental, personnel
6 records, financial information, personal assets information and tax returns.

7 **3. SCOPE**

8 The protections conferred by this agreement cover not only confidential material (as
9 defined above), but also (1) any information copied or extracted from confidential material; (2) all
10 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
11 conversations, or presentations by parties or their counsel that might reveal confidential material.

12 However, the protections conferred by this agreement do not cover information that is in
13 the public domain or becomes part of the public domain through trial or otherwise.

14 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
16 or produced by another party or by a non-party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
18 categories of persons and under the conditions described in this agreement. Confidential material
19 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
20 that access is limited to the persons authorized under this agreement.

21
22 ¹ The subject long-term care insurance policy was issued by Valley Forge Life Insurance Company
23 (“Valley Forge”) which was, at the time, an entity that fell within the broader CNA family of
24 companies. Policies issued by Valley Forge, including the policy issued to Patricia Percy (the
25 “Policy”), were later indirectly novated to Jackson National Life Insurance Company (“Jackson
26 National”) and Jackson National became the insurer of record for the block of policies.
Notwithstanding the novation, however, all risk for long-term care insurance policies issued by
Valley Forge, including the Policy, was ceded back to a CNA affiliate, Continental Casualty
Company (“Continental”), via quota share reinsurance. Continental presently holds all risk for the
Policy and oversees the administration of the Policy and others like it.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the designating party, a receiving party may disclose any
3 confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
22 under this agreement;

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 4.3 Filing Confidential Material. Before filing confidential material or discussing or
26 referencing such material in court filings, the filing party shall confer with the designating party,

in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. QUALIFIED PROTECTIVE ORDER PURSUANT TO HIPAA.

This stipulated protective order is meant to be a "qualified protective order" pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. § 164.512(e)(1), which governs the disclosure of PHI in the course of judicial proceedings. This order applies to any and all records produced by a "covered entity" as defined by 45 C.F.R. §160.103, which has received a request or subpoena for medical or other records which include PHI as defined by 45 C.F.R. §160.103.

(a) During the course of this litigation, it may be necessary for "covered entities", the parties, their attorneys or others to disclose medical, or other types of records, which contain PHI, as that term is defined under HIPAA and the Federal Regulations enacted pursuant to said Act.

(b) All PHI disclosed by any "covered entity" or any of Ms. Percy's healthcare providers or mental healthcare providers shall be used for the sole purpose of preparing for or conducting this litigation, including, but not limited to, investigation, consultation, discovery, depositions, trial preparation, trial, appeal, resolution, mediation or uses incidental to the

1 proceedings in this case, and shall not be disclosed or revealed to anyone not authorized by this
2 protective order.

3 (c) PHI produced pursuant to this HIPAA Qualified Order may include, in
4 addition to all other categories of PHI, information related to sexually transmitted disease, genetic
5 testing, HIV, behavioral or mental health services, and treatment for alcohol and drug abuse.

6 (d) By Order of this Court, any and all records containing PHI may be disclosed
7 without further notice, by any “covered entity” or healthcare provider, party or party’s attorneys,
8 to:

9 i. The parties themselves, the parties’ attorneys, experts, consultants,
10 any witness or other person retained or called by the parties, treating physicians, other healthcare
11 providers, insurance carriers, or other entities from whom damages, compensation, or indemnity
12 is sought, and any entity performing, monitoring, or adjusting activities on behalf of such insurance
13 carrier or other entity and/or their employees, agents, or third-party administrators for any of the
14 parties involved in litigation; in any proceeding for health oversight activities as permitted under
15 45 C.F.R. 164.512, court reporters, copy services, other similar vendors to the parties and their
16 attorneys, as well as the professional and support staff of all of the above.

17 ii. Prior to disclosing PHI to persons involved in this litigation, counsel
18 shall inform each such person that PHI may not be used or disclosed for any purpose other than
19 this litigation and require that each such person read and execute Exhibit A to this Stipulated
20 Protective Order. Counsel shall take all other reasonable steps to ensure that persons receiving
21 PHI do not use or disclose such information for any purpose other than this litigation.

22 iii. Within sixty days after termination of this action, including all
23 appeals, the parties, and each entity governed by this order shall either (a) destroy, or (b) return to
24 the entity who originally produced it, all PHI, including copies made, provided, however, that said
25 PHI may be retained in the files of the entities listed in subparagraph (i) above and may be
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1 destroyed pursuant to their regular file retention policies rather than within 60 days, so long as the
2 PHI is maintained in a secure environment.

3 **6. DESIGNATING PROTECTED MATERIAL**

4 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
5 or non-party that designates information or items for protection under this agreement must take
6 care to limit any such designation to specific material that qualifies under the appropriate
7 standards. The designating party must designate for protection only those parts of material,
8 documents, items, or oral or written communications that qualify, so that other portions of the
9 material, documents, items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
13 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
14 and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated for
16 protection do not qualify for protection, the designating party must promptly notify all other parties
17 that it is withdrawing the mistaken designation.

18 6.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement (see, *e.g.*, second paragraph of section 6.2(b) below), or as otherwise stipulated or
20 ordered, disclosure or discovery material that qualifies for protection under this agreement must
21 be clearly so designated before or when the material is disclosed or produced.

22 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
23 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
24 the designating party must affix the word "CONFIDENTIAL" to each page that contains
25 confidential material. If only a portion or portions of the material on a page qualifies for protection,
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1 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties
4 and any participating non-parties must identify on the record, during the deposition or other pretrial
5 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
6 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
7 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
8 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
9 at trial, the issue should be addressed during the pre-trial conference.

10 (c) Other tangible items: the producing party must affix in a prominent place
11 on the exterior of the container or containers in which the information or item is stored the word
12 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
13 the producing party, to the extent practicable, shall identify the protected portion(s).

14 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the designating party’s
16 right to secure protection under this agreement for such material. Upon timely correction of a
17 designation, the receiving party must make reasonable efforts to ensure that the material is treated
18 in accordance with the provisions of this agreement.

19 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

1 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 2 regarding confidential designations without court involvement. Any motion regarding confidential
 3 designations or for a protective order must include a certification, in the motion or in a declaration
 4 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 5 affected parties in an effort to resolve the dispute without court action. The certification must list
 6 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 7 to-face meeting or a telephone conference.

8 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 9 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 10 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 12 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 13 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 14 the material in question as confidential until the court rules on the challenge.

15 **8. RIGHT TO ASSERT OTHER OBJECTIONS**

16 By stipulating to the entry of this protective order no party waives any right it otherwise
 17 would have to object to disclosing or producing any information or item on any ground not
 18 addressed in this stipulated protective order. Similarly, no party waives any right to object on any
 19 ground to use in evidence of any of the material covered by this protective order. A non-party
 20 subpoenaed to produce documents or tangible things or to permit inspection may raise objections
 21 in accordance with the procedures set forth in the Fed. R. Civ. P. 45.

22 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 23 **OTHER LITIGATION**

24 If a party is served with a subpoena or a court order issued in other litigation that compels
 25 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 26 must:

1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 the designating party whose confidential material may be affected.

8 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
10 material to any person or in any circumstance not authorized under this agreement, the receiving
11 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
14 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
15 Bound” that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 17 **PROTECTED MATERIAL**

18 When a producing party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
21 is not intended to modify whatever procedure may be established in an e-discovery order or
22 agreement that provides for production without prior privilege review. The parties agree to the
23 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

24 **12. NON TERMINATION AND RETURN OF DOCUMENTS**

25 Within 60 days after the termination of this action, including all appeals, each receiving
26 party must return all confidential material to the producing party, including all copies, extracts and

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1 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction,
2 including paragraph 5(d)(iii) above.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
6 product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a
8 designating party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
11 segregation of privileged and/or protected information before production. Information produced
12 in discovery that is protected as privileged or work product shall be immediately returned to the
13 producing party.

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15 Dated this 14th day of March, 2024.

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17 Robert S. Lasnik
18 United States District Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of _____ **[insert formal name of the case and the number and initials
 assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____